

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KEITH NICHOLSON SERVICES, LLC)

Plaintiff,)

v.)

**AMERICAN PETROLEUM
PARTNERS OPERATING, LLC,**)

Defendant.)

2:19cv1219

Electronic Filing

MEMORANDUM ORDER

August 4, 2020

Plaintiff, Keith Nicholson Services, LLC, (“KNS” or “Plaintiff”), originally initiated this lawsuit by filing a Complaint in the United States District Court for the Northern District of West Virginia against various parties, including Defendant, American Petroleum Partners Operating, LLC, (“APP” or “Defendant”) alleging breach of contract (Count I), account stated and open account (Count II), unjust enrichment and quantum meruit (Count III), and fraud and/or promissory estoppel (Count IV) against APP. Upon motion by APP, Counts I through IV of the Complaint filed in West Virginia were transferred to the United States District Court for the Western District of Pennsylvania. The case was referred to United States Magistrate Judge Patricia L. Dodge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

On October 18, 2019, APP filed a Motion to Dismiss (ECF No. 46) requesting that the Court: (a) dismiss Counts III and IV in their entirety; (b) strike Plaintiff’s demand for consequential, punitive, and other compensatory damages; and (c) strike Plaintiff’s demand for a trial by jury. The Magistrate Judge’s Report and Recommendation (ECF No. 77), filed on May 8, 2020, recommended that the Motion to Dismiss be granted. The parties were informed that in

accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that they had fourteen (14) days to file any objections. No objections were filed.

After review of the pleadings and documents in the case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 4th day of August, 2020,

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 46) filed by APP is **GRANTED**. Counts III and IV of Plaintiff's Complaint are dismissed with prejudice, and Plaintiff's claim for consequential and punitive damages and its demand for a jury trial are hereby stricken from the Complaint.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 77) dated May 8, 2020 is adopted as the Opinion of the Court.

s/ DAVID STEWART CERCONI
David Stewart Cercone
Senior United States District Judge

cc: Edward R. Kennedy, Esquire
Jeffrey A. Kimble, Esquire
Adam S. Ennis, Esquire
Thomas J. Sengewalt, Esquire

(Via CM/ECF Electronic Mail)